

1 BILL NO. S-82-11-07

2 SPECIAL ORDINANCE NO. S-211-82

3 AN ORDINANCE approving Street Improvement  
4 Resolution No. 5943-82, Pemberton Dike  
5 Area, with Hipskind Concrete Corporation,  
in connection with the Board of Public Works.

6 BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF  
7 FORT WAYNE, INDIANA:

8 SECTION 1. That a certain Contract dated September 1,  
9 1982, between the City of Fort Wayne, Indiana, by and through  
10 its Mayor and the Board of Public Works and Hipskind Concrete  
11 Corporation, for:


12 1982 Flood Damage Repair in the Pemberton  
13 Dike Area, including Federal Emergency  
14 Mangement Agency Survey Reports No. 041854,  
047245, 041880, and 047247;

15 under Board of Public Works Street Improvement Resolution No.  
16 5943-82, involving a total cost of Fifty-Two Thousand Seventy-  
17 Nine and 90/100 Dollars (\$52,079.90), all as more particularly  
18 set forth in said Resolution and Contract, and which is on file  
19 with the Office of the Board of Public Works and is by reference  
20 incorporated herein, made a part hereof and is hereby in all  
21 things ratified, confirmed and approved. Two copies of said  
22 Contract are on file with the Office of the City Clerk and made  
23 available for public inspection, according to law.

24 SECTION 2. That this Ordinance shall be in full force  
25 and effect from and after its passage and any and all necessary  
26 approval by the Mayor.

27  
28  
29 APPROVED AS TO FORM  
30 AND LEGALITY

31  
32   
Bruce O. Boxberger, City Attorney

  
Councilmember

Read the first time in full and on motion by Stier, seconded by Public, and duly adopted, read the second time by title and referred to the Committee Public Works (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Council Chambers, City-County Building, Fort Wayne, Indiana, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_.M.,E.S.T.

DATE: 11-9-82

C. W. Westerman  
CHARLES W. WESTERMAN - CITY CLERK

Read the third time in full and on motion by Stier, seconded by Public, and duly adopted, placed on its passage. PASSED (LOST) by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>	<u>TO-WIT:</u>
<u>TOTAL VOTES</u>	<u>9</u>	_____	_____	_____	_____
<u>BRADBURY</u>	<u>✓</u>	_____	_____	_____	_____
<u>BURNS</u>	<u>✓</u>	_____	_____	_____	_____
<u>EISBART</u>	<u>✓</u>	_____	_____	_____	_____
<u>GIAQUINTA</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHMIDT</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCHOMBURG</u>	<u>✓</u>	_____	_____	_____	_____
<u>SCRUGGS</u>	<u>✓</u>	_____	_____	_____	_____
<u>STIER</u>	<u>✓</u>	_____	_____	_____	_____
<u>TALARICO</u>	<u>✓</u>	_____	_____	_____	_____

DATE: 11-23-82

C. W. Westerman  
CHARLES W. WESTERMAN - CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ZONING MAP) (GENERAL) (ANNEXATION) (SPECIAL) (APPROPRIATION) ORDINANCE (RESOLUTION) NO. S-211-82 on the 23rd day of November, 1982

ATTEST:

(SEAL)

C. W. Westerman  
CHARLES W. WESTERMAN - CITY CLERK

Samuel J. Talarico  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 24th day of November, 1982, at the hour of 11:30 o'clock A.M.,E.S.T.

C. W. Westerman  
CHARLES W. WESTERMAN - CITY CLERK

Approved and signed by me this 29th day of November 1982, at the hour of 9 o'clock A.M.,E.S.T.

WIN MOSES JR  
WIN MOSES, JR. - MAYOR

BILL NO. S-82-11-07

REPORT OF THE COMMITTEE ON PUBLIC WORKS

WE, YOUR COMMITTEE ON Public Works TO WHOM WAS REFERRED AN  
ORDINANCE approving Street Improvement Resolution No. 5943-82,  
Pemberton Dike Area, with Hipkind Concrete Corporation, in  
connection with the Board of Public Works

HAVE HAD SAID ORDINANCE UNDER CONSIDERATION AND BEG LEAVE TO REPORT  
BACK TO THE COMMON COUNCIL THAT SAID ORDINANCE Do PASS.

JAMES S. STIER, CHAIRMAN

BEN A. EISBART, VICE CHAIRMAN

VICTOR L. SCRUGGS

MARK E. GIAQUINTA

DONALD J. SCHMIDT

James S. Stier  
Ben A. Eisbart  
Victor L. Scruggs  
Mark E. Giaquinta  
Donald J. Schmidt

11-23-82  
CONCURRED IN  
DATE \_\_\_\_\_  
CITY CLERK

72-76-10  
9/1/82

# CONTRACT

This Agreement, made and entered into this 1 day of Sept, 1982

by and between ----- HIPSKIND CONCRETE CORPORATION -----

----- 5502 MASON DRIVE, FORT WAYNE, INDIANA -----

hereinafter called "Contractor" and the City of Fort Wayne, Indiana, a municipal corporation, herein-  
after called "City," under and by virtue of an act of the General Assembly of the State of Indiana,  
entitled "An Act Concerning Municipal Corporations," approved March 6, 1905, and all amendatory  
and supplementary acts thereto, WITNESSETH: That the Contractor covenants and agrees to im-  
provement Resolution No. 5943-82

prove by repairing 1982 Flood Damage in the Pemberton Dike Area.

This resolution includes: DSR #041854, DSR #047245, DSR #041880, DSR #047247

by grading and paving the roadway to a width of XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

XX

upon a foundation and with curbing as fully set out in the specifications hereinafter referred to, in a  
good and workmanlike manner and to the entire satisfaction of said City, in accordance with Improve-  
ment Resolution No. 5943-82 attached hereto and by reference made a part hereof.

XX

At the following prices:

DSR #041854		
6" Concrete Drives (Includes Removal)	Seventeen dollars and fifty cents per square yard	17.50
4" Concrete Sidewalk (Including Removal)	One dollar and sixty-five cents per square foot	1.65
Concrete Curb Type III (Including Removal & Asphalt Patching)	Seven dollars and no cents per lineal foot	7.00
Seeding, Topsoil, Mulch & Fine Grading	Three dollars and no cents per square yard	3.00
DSR #047245		
4" Concrete Sidewalk (Including Removal)	One dollar and seventy cents per square foot	1.70
Concrete Curb Type III (Including Removal & Asphalt Patching)	Seven dollars and thirty cents per lineal foot	7.30
Seeding, Topsoil, Mulch & Fine Grading	Three dollars and no cents per square yard	3.00
Concrete Wingwalk (Including Removal)	Two dollars and no cents per square foot	2.00
Hot Asphalt Patching	Twenty-eight dollars and no cents per ton	28.00
DSR #041880		
Asphalt Removal (Surface)	Two dollars and no cents per square yard	2.00

Continued....

The Contractor hereby expressly agrees to perform all the work in the prosecution of the above described improvement according to the terms and conditions of Improvement Resolution No. 5943-82 the plans, profiles, specifications and the contractor's bid therefor on file in the office of the Department of Public Works of said City, which said resolution, profile, plans and specifications are made a part of this contract as fully and effectually as if copied herein at full length, (copies of which are attached hereto).

It is hereby agreed that no assignment of this contract shall be made without the written consent of the City; said Contractor hereby covenants and agrees that said improvement shall be finally and in all respects completed on or before Sept. 30, 1982 and the Contractor agrees to pay and give to the City, as liquidated damages, the sum of ~~\$250.00~~ \$100.00 for each and every day after said date

\_\_\_\_\_, 19\_\_\_\_ until said work is finally completed and ready for acceptance by the City. It being also understood that in event of any conflict between this contract and the specifications, that the former shall be considered to contain the intention of the parties hereto.

It is further agreed by and between said parties, that the acceptance of the work provided for in this contract, or the payment therefor, for the whole or a part, shall not constitute a waiver on the part of the City of any of the provisions of the contract, nor shall it release said Contractor, or the sureties upon its bond for the faithful performance thereof, nor shall the acceptance be even prima facie evidence of the performance of any provisions of such contract except to the extent of entitling said Contractor to receive the price therefor. It is further understood that the failure of the City to exercise its right of inspection or rejection of material and work, or the exercise of such right shall not in any sense be considered an acceptance of any part of said work or material.

The Contractor further contracts and agrees that in the prosecution of said work all proper skill and care will be exercised, that said party will properly and fully guard all excavations and dangerous places, and will use all due and proper precautions to prevent injury to any property, person and persons, what or whomsoever. That for and during the period of the making of such improvement, and the period for which the same is to be maintained and kept in repair by the Contractor, the City shall be saved harmless from any and all liability whatsoever growing out of any injury or damage to property or persons because of any neglect or fault of the said Contractor, its agents or employees, in the execution of this contract or any matter connected therewith or related thereto and to pay any judgment with costs which may be obtained against said City, growing out of any such injury or damage.

To each of the conditions and stipulations in this contract, the undersigned bind themselves, their successors and assigns.

IN WITNESS WHEREOF, we the foregoing named parties hereunto set our hands this 1

day of Sept., 1982

ATTEST:

Janice M Hipskind  
Corporate Secretary

HIPSKIND CONCRETE CORPORATION

BY: James D Hipskind

ITS: President  
Contractor, Party of the First Part.

City of Fort Wayne, By and Through:

ATTEST:

Sandra E. Kennedy  
Secretary and Clerk

Ray L. Collins  
Its Board of Public Works and Mayor.

Edmonoff  
ASSOCIATE CITY ATTORNEY

Continued

Hot Asphalt Concrete Binder	Twenty-eight dollars and no cents per ton	28.00
Hot Asphalt Concrete Surface A-2	Thirty dollars and no cents per ton	30.00
DSR #047247 Pavement Removal	Two dollars and no cents per square yard	2.00
Hot Asphalt Concrete Base #53	Twenty-five dollars and no cents per ton	25.00
Hot Asphalt Concrete Binder	Twenty-eight dollars and no cents per ton	28.00
Hot Asphalt Concrete Surface A-2	Thirty dollars and no cents per ton	30.00
6" Concrete Drive (Including Removal)	Sixteen dollars and fifty-nine cents per square yard	16.59
4" Concrete Sidewalk (Including Removal)	One dollar and sixty-five cents per square foot	1.65
Concrete Curb Type III (Including Removal)	Six dollars and fifty cents per lineal foot	6.50
Concrete Wingwalk (Including Removal)	Two dollars and no cents per square foot	2.00
Manhole Casting Type A	Two hundred dollars and no cents per each	200.00
C.B. Casting, Type C	One thousand, two hundred and sixty dollars and no cents per each	1,260.00
Seeding, Topsoil, Mulch & Fine Grading	One dollar and fifty cents per square yard	1.50
Topsoil	Three dollars and no cents per ton	3.00
Total	Fifty-two thousand, seventy-nine dollars and ninety cents	\$52,079.90

The Contractor will furnish immediately a certificate from the Industrial Board of the State of Indiana that he has complied with Sections 5, 68, 69 of the Workmen's Compensation Act, approved March 14, 1929, in accordance with Section 14 of the Compensation Act (Acts 1929, page 545, being I.C. 22-3-2-1 et. seq.).

A copy of General Ordinance No. G-34-78 (as amended) concerning discriminating in employment under municipal contracts, is attached and incorporated herein by reference.

PERFORMANCE AND GUARANTEE BOND

KNOW ALL MEN BY THESE PRESENTS, that we HIPSKIND CONCRETE CORPORATION  
as Principal, and the \_\_\_\_\_

\_\_\_\_\_, a corporation organized under the laws of the  
State of \_\_\_\_\_, and duly authorized to transact business in the  
State of Indiana, as Surety, are held firmly bound unto the City of Fort Wayne,  
Indiana, an Indiana Municipal Corporation in the sum of FIFTY-TWO THOUSAND,  
SEVENTY-NINE DOLLARS AND NINETY CENTS -----  
(\$ 52,079.90-----), for the payment whereof well and truly to be made,  
the Principal and Surety bind themselves, their heirs, executors, administrators,  
successors and assigns, jointly and severally, firmly by these presents. The  
condition of the above obligation is such that

WHEREAS, the Principal did on the 1 day of Sept, 19 82,  
enter into a contract with the City of Fort Wayne ~~XXXXXX~~  
Improvement Resolution No. 5943-82

To repair 1982 Flood Damage in the Pemberton Dike Area.

This Resolution includes: DSR #041854  
DSR #047245  
DSR #041880  
DSR #047247

at a cost of \$ 52,079.90-----, according to certain plans and specifications  
prepared by or approved by the City.

WHEREAS, the grant of authority by City to so construct such improvement  
provides:

1. That said improvement shall be completed according to said plans and  
specifications, and contractor shall warrant and guarantee all work, mater-  
ial, and conditions of the improvement for a period of three (3) years from  
the date of final acceptance in writing by the Owner;
2. There shall be filed with the City, within thirty (30) days after comple-  
tion, a Completion Affidavit;
3. Said Principal is required to agree to make such adjustments, modifica-  
tions, and repairs as required by the City within thirty (30) days after  
notice.



WHEREAS, said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the contract or to the work to be performed thereunder, or the specifications accompanying the same, shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract, or to the work or to the specifications.

NOW THEREFORE, if the principal shall faithfully perform all of the terms and conditions required of it by the contract and shall for three (3) years after acceptance of said improvement by City warrant and guarantee said improvement and shall indemnify the City for all loss that City may sustain by reason of the Principal's failure to comply with any of the terms of the authorization, then this obligation shall be void, otherwise it shall remain in full force and effect.

HIPSKIND CONCRETE CORPORATION  
(Contractor)

BY: *Samuel H. Hyslop*  
ITS: President

ATTEST:

*Maricela S. Dumirddie*  
Secretary  
(Title)

TRINITY UNIVERSAL  
Surety

\*BY: *Terence*  
Authorized Agent  
(Attorney-in-Fact)

\*If signed by an agent, power of attorney must be attached

ATTACH POWER OF ATTORNEY



KNOW ALL MEN BY THESE PRESENTS: that

----- HIPSKIND CONCRETE CORPORATION -----

(Name of Contractor)

----- 5502 MASON DRIVE, FORT WAYNE, INDIANA -----

(Address)



Dallas, Texas 75201

**POWER OF ATTORNEY**

KNOW ALL MEN BY THESE PRESENTS:

That TRINITY UNIVERSAL INSURANCE COMPANY and SECURITY NATIONAL INSURANCE COMPANY each a Texas Corporation and TRINITY UNIVERSAL INSURANCE COMPANY OF KANSAS, INC., a Kansas Corporation do hereby appoint

**TERRENCE J. WARD - FORT WAYNE, INDIANA**

its true and lawful Attorney(s)-in-Fact, with full authority to execute on its behalf fidelity and surety bonds or undertakings and other documents of a similar character issued in the course of its business, and to bind the respective company thereby.

IN WITNESS WHEREOF, TRINITY UNIVERSAL INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY and TRINITY UNIVERSAL INSURANCE COMPANY OF KANSAS, INC., have each executed and attested these presents

this 3rd day of June, 1977

  
JUDITH E. FAGAN, CORP. SECRETARY

  
A.J. TYLER, PRESIDENT

**AUTHORITY FOR POWER OF ATTORNEY**

That TRINITY UNIVERSAL INSURANCE COMPANY and SECURITY NATIONAL INSURANCE COMPANY, each a Texas Corporation and TRINITY UNIVERSAL INSURANCE COMPANY OF KANSAS, INC., a Kansas Corporation, in pursuance of authority granted by that certain resolution adopted by their respective Board of Directors on the 1st day of March, 1976 and of which the following is a true, full, and complete copy:

"RESOLVED, That the President, any Vice-President, or any Secretary of each of these Companies be and they are hereby authorized and empowered to make, execute, and deliver in behalf of these Companies unto such person or persons residing within the United States of America, as they may select, its Power of Attorney constituting and appointing each such person its Attorney-in-Fact, with full power and authority to make, execute and deliver, for it, in its name and in its behalf, as surety, any particular bond or undertaking that may be required in the specified territory, under such limitations and restrictions, both as to nature of such bonds or undertaking and as to limits of liability to be undertaken by these Companies, as said Officers may deem proper, the nature of such bonds or undertakings and the limits of liability to which such Powers of Attorney may be restricted, to be in each instance specified in such Power of Attorney.

RESOLVED, That any and all Attorneys-in-Fact and Officers of the Companies, including Assistant Secretaries, whether or not the Secretary is absent, be and are hereby authorized and empowered to certify or verify copies of the By-Laws of these Companies as well as any resolution of the Directors, having to do with the execution of bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, or with regard to the powers of any of the officers of these Companies or of Attorneys-in-Fact.

RESOLVED, That the signature of any of the persons described in the foregoing resolution may be facsimile signatures as fixed or reproduced by any form of typing, printing, stamping or other reproduction of the names of the persons hereinabove authorized."

**CERTIFICATION OF POWER ATTORNEY**

I, Judith E. Fagan, Corp. Secretary of TRINITY UNIVERSAL INSURANCE COMPANY, SECURITY NATIONAL INSURANCE COMPANY and TRINITY UNIVERSAL INSURANCE COMPANY OF KANSAS, INC. do hereby certify that the foregoing Resolution of the Boards of Directors of these Corporations, and the Power Attorney issued pursuant thereto, are true and correct and are still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of each Corporation

this 19TH day of AUGUST, 1982



  
JUDITH E. FAGAN, CORP. SECRETARY

NOW, THEREFORE, if the Principal shall promptly make payment to all persons, firms, subcontractors, and corporations furnishing materials for or performing labor in the prosecution of the work provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums on said work, and for all labor, performed in such work whether by subconstructor or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

IN WITNESS WHEREOF, this instrument is executed in 3 counter-  
(number)  
parts, each one of which shall be deemed an original, this 1 day of

Sept., 1978  
82  
(SEAL)

ATTEST:

Janice M. Hipshind  
(Principal) Secretary

HIPSKIND CONCRETE CORPORATION

Principal

BY David D. Hipshind

President  
(Title)

(Address)

Witness as to Principal

(Address)

TRINITY UNIVERSAL

Surety

BY Tenney P. [Signature]

Attorney-in-Fact  
(Authorized Agent)

1928 Inwood Drive

P. O. Box 10510

(Address)

Fort Wayne, IN 46852

Marcia S. Duvall  
Witness as to Surety

(Address)

NOTE: Date of Bond must not be prior to date of Contract.  
If Contractor is Partnership, all partners should execute bond.

ATTACH POWER OF ATTORNEY

TITLE OF ORDINANCE Street Improvement Resolution #5943-82, Pember Dike Area

DEPARTMENT REQUESTING ORDINANCE Board of Public Works

5-82-11-07

SYNOPSIS OF ORDINANCE Repair of 1982 flood damage in the Pember Dike Area.

This resolution includes Federal Emergency Management Agency Survey Report

Nos. 041854, 047245, 041880, 047247. This contract was awarded to Hipskind Concrete Corporation.

Prior approval was obtained July 27, 1982.

EFFECT OF PASSAGE to repair flood damage.

EFFECT OF NON-PASSAGE

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$52,079.90

ASSIGNED TO COMMITTEE